

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

AMMD, LLC,
Plaintiff

v.

**VITA-GEN, INC., VITA-GEN
LABORATORIES, LLC,**
Defendants

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No. 1:20-CV-00200-RP

ORDER

Before the Court is Plaintiff/Counter-Defendant AMMD, LLC's Motion in Limine to Bar Defendants from Presenting Proposed Expert Witness Bruce Rifkin at Trial, Dkt. 64. AMMD filed its motion on April 21, 2022. *Id.* The next day, the District Court referred the motion to the undersigned for disposition. Dkt. 66. Defendants/Counter-Plaintiffs Vita-Gen, Inc.'s deadline to respond to AMMD's motion was April 28, 2022. W.D. Tex. Loc. R. CV-7(D)(2). Vita-Gen filed nothing in response. On May 2, 2022, the undersigned set AMMD's motion for a hearing to take place on May 10, 2022. Dkt. 66. The order setting that hearing required the parties to confer and file a joint advisory by May 6, 2022, indicating any resolved disputes and any remaining issues to be addressed at the hearing, along with the parties' respective positions on those remaining disputes. *Id.* In that joint advisory, the parties indicated they had not resolved the issues raised in AMMD's motion and that a hearing was still needed. Dkt. 69, at 2. The advisory also included a one-sentence

summary of Vita-Gen's position on the motion, though that summary did not substantively address any of AMMD's arguments. *Id.*

Prior to the May 10 hearing, in response to a separate joint advisory filed by the parties indicating they had settled the case, Dkt. 72, the undersigned canceled the hearing on AMMD's motion. Dkt. 71. The alleged agreement between the parties is now disputed, Dkt. 81, and the District Court has since reset the case to be tried, Dkt. 84. AMMD's motion, therefore, is once again ripe for decision. Despite multiple communications from the Court's staff, Defendants have not responded to Plaintiff's motion, nor requested leave to file an untimely response. The Court, therefore, treats the motion as unopposed. W.D. Tex. Loc. R. CV-7(D)(2).

Accordingly, the Court **GRANTS** Plaintiff's motion, Dkt. 64, in its entirety and **ORDERS** Defendants' proposed expert witness, Bruce Rifkin, is precluded from testifying at the upcoming trial.

SIGNED December 1, 2022.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE